IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

ROBERT SAYLES **PLAINTIFF**

VERSUS **CIVIL ACTION NO.: 3:14-cv-911-CWR-FKB**

ADVANCED RECOVERY SYSTEMS, INC. **DEFENDANT**

DEFENDANT ADVANCED RECOVERY SYSTEMS, INC.'S MEMORANDUM IN SUPPORT OF ITS MOTION PURSUANT TO F. R. CIV. P. 12(B)(6), 12(C) AND 56

Defendant, Advance Recovery Systems, Inc., ("ARS"), a third party debt collection agency, offers this Memorandum in support of its Motion [#19] pursuant to F. R. Civ. P. 12(b)(6), 12(c) and 56 for a Judgment in ARS's favor and against the Plaintiff-debtor, Robert Sayles, ("Mr. Sayles" or "Plaintiff"), on the grounds that ARS did not violate the Federal Fair Debt Collection Practices Act ("the FDCPA"), specifically 15 U.S.C. §1692e(8), as postulated in Mr. Sayles' Complaint [#1].

I. FACTUAL AND PROCEDURAL BACKGROUND

This lawsuit arises out of attempts by the Defendant third-party debt collector, ARS, to collect these five (5) delinquent debts owed by Mr. Sayles to St. Dominic's Hospital in Jackson Mississippi and its affiliated medical providers:

CREDITOR		SER. DATE	ARS ACCT #	AMOUNT
A.	St. D. ER Phys.	2/5/11	007	$131.00
B.	St. D. Hosp.	2/5/11	008	$188.77
C.	St. D. Hosp.	4/14/12	009	$130.00
D.	St. D. Hosp.	4/14/12	012	$331.78
E.	St. D. Med. Assoc.	4/29/13	013	$534.40

See, Motion, Ex. A, Declaration Under Penalty of Perjury pursuant to 28 USC § 1746 ("DUPP") by ARS's Robert Shelton ("Mr. Shelton") and Ex. B, DUPP by ARS's independent collection attorney, Robert W. Camp ("Mr. Camp").

ARS's initial communication[1] with Mr. Sayles for each debt was a form letter substantively identical to Mr. Shelton's Ex. A-2 naming Mr. Sayles' original creditor and the amount of his unpaid debt, and including the FDCPA following "debt validation notice"[2] required by 15 U.S.C. § 1692g(a):

> This is an attempt to collect a debt, any information obtained will be used for that purpose.
>
> Unless you notify this office *within 30 days after receiving this notice* that you dispute the validity of this debt or any portion there of, this office will assume this debt is valid. If you notify this office in *writing within 30 days from receiving this notice*, this office will; obtain verification of the debt or obtain a copy of a judgment and mail you a copy of such judgment

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[1] "Section [15 USC] 1692g requires debt collectors *within five days of the initial communication regarding a debt* to provide debtors with written notice containing the amount of the debt and the name of the creditor to whom the debt is owed. § 1692g(a)(1)-(2). That section also requires a written statement to debtors explaining that: (1) unless the debtor "disputes the validity of the debt" within 30 days, the debt collector will assume the debt is valid; (2) that if the debtor notifies the collector that she is disputing the debt in writing within the 30 day period, "the debt collector will obtain verification of the debt [from the creditor]…and a copy of [the] verification…will be mailed to the consumer"; and (3) that upon debtor's request the debt collector will give him the name and address of the original creditor, if the original creditor is different from the current one. § 1692g(a)(3)-(5). If the debtor requests verification of the debt or information on the original creditor, the debt collector must "cease collection of the debt…until the [requested information] is mailed to the consumer." § 1692g(b). However, the statute does not require the debt collector to inform the debtor of the obligation to cease collection under these circumstances. Compare § 1692g(a) with § 1692g(b)." *Peter v. GC Servs. L.P.*, 310 F.3d 344, 348 (5th Cir. 2002)(emphasis added); *McMurray v. ProCollect, Inc.*, 687 F.3d 665, 668 (5th Cir. 2012).

[2] Under the FDCPA, a debt collector's "initial communication" with a consumer must provide the disclosures set forth in 15 U.S.C. § 1692g(a). See *Hernandez v. Williams, Zinman & Parham, P.C.*, 2014 U.S. Dist. LEXIS 32682, 2014 WL 977649, at *3 (D. Ariz. March 13, 2014) (citing *Voris v. Resurgent Capital Servs., L.P.*, 494 F.Supp.2d 1156, 1169 (S.D. Cal. 2007)). These disclosures are otherwise known as a "debt validation notice." *Id.*

> or verification. If you request this office in *writing within 30 days after receiving this notice*, this office will provide you with the name and address of the original creditor, if different from the current creditor.

Ex. A-2, ¶ 3 (emphasis added).

On 9/25/13, Mr. Camp secured a judgment in the Justice Court of Hinds County in favor of ARS and against Mr. Sayles for the first three accounts. See Ex. A-1. Mr. Sayles appeared at trial, where he agreed to a payment plan to satisfy the judgment. Ex. B, ¶ 7. The judgment became final in the absence of an appeal on or about 10/26/13.[3] Ex. B, ¶ 7. However, Mr. Sayles has subsequently paid nothing in satisfaction of the 9/25/13 judgment. Ex. B, ¶ 7.

The fourth account for $534 (012) was placed for collection in early June 2013. Ex. A, ¶ 6. ARS's letter containing the § 1692g(a) notices, Ex. A-1, was mailed on 6/9/13 and was not returned. Ex. A, ¶ 6. Mr. Sayles did not request verification or dispute the debt during the FDCPA's "30-day statutory contest period."[4] Ex. A, ¶ 7. The last account for $331 (013) was placed for collection in early September 2013. Ex. A, ¶ 6. On 9/5/13, ARS's letter containing the § 1692g(a) notices, Ex. A-1, was mailed. It was not subsequently returned to ARS. Ex. A, ¶ 6. Mr. Sayles did not timely request verification or dispute the debt. Ex. A, ¶ 7.

On 3/4/14 ARS received a faxed unsigned form letter, Ex. A-3, Ex. A, ¶ 10. Except for the requisite personal identifier redactions it substantively reads as follows:

> Re: VALIDATION OF DEBT REQUEST
>
> SSN: XXX-XX-XXXX

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[3] See, Unif. Justice Court Rule 1.25 and Unif. County and Circuit Court Rule 5.04.

[4] The Fifth Circuit refers to the 30-day period to dispute or request validation or as the § 1692g "30-day statutory contest period." *e.g., Peter*, 310 F.3d, 349; *McMurray v. ProCollect, Inc.*, 687 F.3d 665, 667 (5th Cir. 2012)(same).

DOB: XX/XX/XXXX

To Whom It May Concern:

Be advised, this is not a refusal to pay, but a notice sent pursuant to the Fair Debt Collection Practices Act, 15 USC 1692g Sec. 809 (b) that your claim is disputed and validation is requested.

This is NOT a request for "verification" or proof of my mailing address, but a request for VALIDATION made pursuant to the above named Title and Section. I respectfully request that your office provide me with competent evidence that I have any legal obligation to pay you. I would like this for all the accounts that I have in collections with you if there is more then one.

Please provide me with the following:

- What the money you say I owe is for;
- Explain and show me how you calculated what you say I owe;
- Provide me with copies of any papers that show I agreed to pay what you say I owe;
- Provide a verification or copy of any judgment if applicable;
- Identify the original creditor;
- Prove the Statute of Limitations has not expired on this account;
- Show me that you are licensed to collect in my state; and
- Provide me with your license numbers and Registered Agent.

If your offices are able to provide the proper documentation as requested, I will require at least 30 days to investigate this information and during such time all collection activity must cease and desist.

Also, during this validation period, if any action is taken which could be considered detrimental to any of my credit reports, I will consult with my legal counsel. This includes any information to a credit reporting repository that could be inaccurate or invalidated or verifying an account as accurate when in fact there is no provided proof that it is.

If your offices fail to respond to this validation request within 30 days from the date of your receipt, all references to this account must be deleted and completely removed from my credit file and a copy of such deletion request shall be sent to me immediately,

Finally, you are to cease and desist from contacting me on any of the phone numbers you currently have on file.

This is an attempt to correct your records, any information obtained shall be used for that purpose.

Yours truly,
Ronald D Sayles

Exhibit A-3.

This action was filed on November 24, 2014.

Based on these facts, ARS has moved for a summary judgment in its favor.

II. ANALYSIS

Because of Plaintiff's FDCPA claims, this Court has "federal question" jurisdiction over this matter pursuant to 28 USC § 1331.[5]

A. FDCPA/FCRA Rule 12(b)(6), 12(c) and 56 Standards.

Rule 12(b)(6) allows dismissal if a plaintiff fails to state a claim upon which relief may be granted. Fed. R. Civ. P. 12(b)(6).[6] Rule 12(c) provides that "[a]fter the pleadings are closed—but early enough not to delay trial—a party may move for judgment on the pleadings." Since ARS has answered [#10], the pleadings are closed. This Court may properly evaluate ARS's motion under either Rule 12(b)(6) or Rule 12(c).[7] The summary judgment standards in this kind of FDCPA/FCRA case are well settled.[8]

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[5] See, *Battle v. GMAC Mortg., LLC*, 2011 U.S. Dist. LEXIS 157647, 5 (S.D. Miss. Dec. 8, 2011).

[6] See *Shakir v. Chase Home Fin., N.A.*, 2011 U.S. Dist. LEXIS 106973, 4 (N.D. Miss. Aug. 29, 2011).

[7] *Shakir*, 2011 U.S. Dist. LEXIS 106973, 3.

[8] See, *Mack v. Prog. Fin. Servs.*, 2015 U.S. Dist. LEXIS 1803, 2 (E.D. Tex. Jan. 7, 2015); *Hunsinger v. SKO Brenner Am., Inc.*,, 4 (N.D. Tex. Apr. 15, 2014) and *Smith v. Citimortgage*, Inc. 2009 U.S. Dist. LEXIS 57435, 3 (S.D. Miss. July 7, 2009).

B. The Claim Asserted in the Complaint

Substantively, Mr. Sayles' Complaint, at ¶ ¶'s 6-13, alleges only the following one count FDCPA violation

6. On February 21, 2014, Plaintiff obtained a copy of his credit report.
7. Defendant had five tradelines on Plaintiff's credit report that listed the creditor name as Advanced Recovery Systems.
8. Three of Defendant's tradelines were involved in a collection action brought by Defendant against Plaintiff in Hinds County Court in Mississippi and a judgment on those accounts was received.
9. The tradelines that were the subject of the judgment were account numbers: UQTR, PDP2, and PQNX [ARS's account #'s 007, 008 and 009].
10. Defendant had two additional tradelines on Plaintiff's credit report that were not involved in the debt collection action: ZYMC and 1218R [ARS's account #'s 012, and 013].
11. *On March 5, 2014, Plaintiff sent, via facsimile, to (601) 969-2997 a letter advising that he disputed the debts and asking for validation of the debt with respect to all the accounts.*
12. On April 16, 2014, Plaintiff having received nothing in the way of the requested information, ran his credit report.
13. *Defendant had failed to mark the two tradelines that were not reduced to judgment as disputed despite having reported the debt to the credit bureaus in April 2014.*

Complaint, ¶ ¶ 6 - 11 (emphasis added).

The unverified Complaint, in ¶ 19, claims that ARS's "failure to update the credit report accurately reflects that Plaintiff's accounts were disputed and updating its trade lines is a violation of 15 U.S.C. §1692e(8) which prohibits the failure to communicate that a debt is disputed." The decisive question of law is whether the March 5, 2014 letter was timely or binding on ARS in any way long after expiration of the 15 U.S.C. § 1692g(a) "30 day statutory contest period" for every on of Plaintiff's debts placed for collection with ARS.

FDCPA plaintiffs "must prove that: (1) the plaintiff has been the object of collection activity arising from consumer debt, (2) the defendant is a debt collector as defined by the FDCPA, and (3) the defendant has engaged in an act or omission prohibited by the FDCPA.[9] In order to sufficiently plead a violation of the FDCPA the complaint must allege the same three elements.[10] ARS does not dispute that it is a debt collector or that Mr. Sayles is a consumer debtor. Therefore, the only issue to be decided by this Court is whether, as a matter of law, ARS engaged in any act or omission in violation of the FDCPA.

1. The FDCPA's validation requirements.

A debt collector violates the FDCPA by failing to provide the information required by Section 1692g(a):

> Debt collectors are required, within five days of the initial communication regarding a debt, to provide consumers with a written notice that contains this information: (1) 'the amount of the debt'; (2) 'the name of the creditor to whom the debt is owed'; (3) a statement that unless the consumer 'disputes the validity of the debt' *within 30 days*, the debt collector will assume the debt is valid; (4) a statement that if the consumer notifies the collector that the consumer is disputing the debt in writing *within the 30 day period*, 'the debt collector will obtain verification of the debt [from the creditor] . . . and a copy of [the] verification . . . will be mailed to the consumer'; and (5) 'a statement that, upon the consumer's written request,' the debt collector will give the consumer 'the name and address of the original creditor, if different from the current creditor.'

McMurray, 687 F.3d, 668. (quoting 15 U.S.C. § 1692g(a))(emphasis added).

By its terms, the underscored statutory language does not obligate a debt collector to send the § 1692g validation notice in each and every communication; rather, the debt collector must only

[9] *See, Neel v. Fannie Mae*, 2014 U.S. Dist. LEXIS 31850, 29 (S.D. Miss. Mar. 12, 2014).

[10] *See, e.g., Pape v. Amos Fin., LLC*, 2014 U.S. Dist. LEXIS 27047, at *7 (D. Conn. Mar. 4, 2014).

do so "[w]ithin five days after the initial communication with a consumer in connection with the collection of any debt." 15 U.S.C. § 1692g(a).[11] Moreover, a debtor's response must be timely:

> Section 1692g(b) provides that if a consumer notifies the debt collector in writing *within 30 days of receipt of an initial communication regarding collection of a debt* that the debt is disputed, the debt collector must "cease collection of the debt" until it "obtains verification of the debt or a copy of a judgment, or the name and address of the original creditor, and a copy of such verification or judgment, or name and address of the original creditor, is mailed to the consumer by the debt collector." 15 U.S.C. § 1692g(b). To sustain a claim pursuant to section 1692g(b), the consumer must dispute the debt or any portion thereof *within 30 days of receipt of the initial communication from the debt collector. Id.*

Mack, 2015 U.S. Dist. LEXIS 1803, 6.

If, as here, the consumer fails to notify the debt collector within 30 days that the debt is disputed, "the collector may assume the debt to be valid."[12] *Mack* illustrates how a debt collector properly responds to a *timely* validation request. In that case, the debt collector sent a validation notice on December 12, 2012. The debtor disputed the debt and requested validation on December 22, 2012, well within the "30 day statutory contest period."[13] Summary judgment was entered for the defendant, which properly "validated" the debt in response to this timely notice of dispute.

Hunsinger illustrates why a debt collector is under no obligation to respond to an untimely validation request. The defendant collection agency, SKO, produced substantial, uncontroverted evidence in the form of an affidavit of its CEO attesting that on July 2, 2008 it sent the plaintiff debtor, Hunsinger, a written notice that the defendant had been retained to collect the debt related to a disputed tradeline.[14] The SKO CEO's affidavit authenticated SKO's letter which contained the information required by §1692g(a). *Id.,* at 10. By his own admission, the Hunsinger did not contact the defendant collection agency until March 13, 2012-more than 3 years after SKO sent its initial notice- at which time Hunsinger, for the first time, demanded "validation" of the "disputed debt." *Id.* SKO argued, among other things, that "it did not have a duty to respond to Hunsinger's debt-verification request because the request was sent more than 30 days after it first mailed Hunsinger notice of the debt...." *Id.*, at 9. Hunsinger argued that his verification request did not have to be timely, and urged that a consumer need not send notice disputing a debt within 30 days of receiving the initial notice from the debt collector. The Court disagreed saying:

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[11] *See, Benson v. Energy Solutions, Inc.*, 2014 U.S. Dist. LEXIS 122033, 29 (D. Ariz. Sept. 2, 2014).

[12] *Hunsinger,* 2014 U.S. Dist. LEXIS 52029, 7 (quoting *Mahon v. Credit Bureau of Placer Cnty. Inc.*, 171 F.3d 1197, 1202 (9th Cir. 1999) quoting *Avila v. Rubin*, 84 F.3d 222, 226 (7th Cir. 1996); 15 U.S.C. § 1692g(a)(3)).

[13] *Mack*, 2015 U.S. Dist. LEXIS 1803, 2-3.

> Aside from his contention that there is no timeliness requirement under the FDCPA, Hunsinger does not otherwise respond to SKO's argument. He does not, for example, assert that he failed to receive the July 2, 2008 debt-collection notice....Nor does he present any evidence that he sent any type of notice disputing the debt or requesting verification within 30 days of SKO's July 2, 2008 debt-collection notice. Consequently, he has not designated any specific facts showing that there is a genuine issue for trial. SKO is therefore entitled to summary judgment on Hunsinger's FDCPA claim because a reasonable trier of fact could not find that he timely complied with the requirements of § 1692g(a) and (b). See, e.g., *Mahon*, 171 F.3d at 1202-03 ("For [plaintiffs'] request to have been effective, it had to be made within thirty days from the date they received the Notice from the Credit Bureau. The [plaintiffs'] tardy request for verification of the debt, therefore, did not trigger any obligation on the part of the Credit Bureau to verify the debt." (citation omitted)); cf. *Bashore*, 452 F. App'x at 524 ("[The plaintiff's] allegation that [the defendant] failed to cease collection activities after notification of her dispute was rejected by the district court on the basis that [the plaintiff] did not allege she notified [the defendant] of the dispute within the 30-day period established by FDCPA." (citing 15 U.S.C. § 1692g(a)(3), (b)).

Hunsinger, 2014 U.S. Dist. LEXIS 52029, 15-16.

ARS's collection notices, Ex. A-2, comply with all notice requirements of 15 U.S.C. § 1692g(a). They state the amount of each debt and the name of the creditor to whom the debt was

[14] *Id.*, 2014 U.S. Dist. LEXIS 52029, 9-10.

owed as required by 15 U.S.C. § 1692g(a)(1) and (2); the method and 30 day time limit for a debtor to "dispute a debt" in writing as required by 15 U.S.C. § 1692g(a)(3); the method and 30 day time limit for a debtor to request "verification" of a debt in writing as required by 15 U.S.C. § 1692g(a)(4) and that, upon the consumer's written request within the thirty-day period, the debt collector will provide the consumer with the name and address of the original creditor, if different from the current creditor, as required by 15 U.S.C. § 1692g(a)(5). Therefore, ARS complied with § 1692g(a)[15]

Mr. Sayles' Complaint nowhere alleges that he contacted ARS to "dispute" any of his debts within 30 days of his receipt of the 1692g(a) "validation" notices. The unsigned generic form letter faxed to ARS on 3/4/14 is conspicuously labeled "VALIDATION OF DEBT REQUEST." It further states that "this is not a refusal to pay, but a notice sent pursuant to the Fair Debt Collection Practices Act, 15 USC 1692g Sec. 809 (b) that your claim is disputed and *validation is requested*" for "all the accounts that I have in collections with you if there is more then one." (emphasis added).

Mr. Sayles first three debts were reduced to judgment on 9/25/13. The Justice Court judgment became final in the absence of an appeal on or about 10/26/13. The first three debts which ARS has reduced to judgment were beyond dispute as a matter of law after 10/26/13.[16] Even if this were not so, the complaint commencing the present action was filed on November 24, 2014, over a year the judgment was final. By then, the FDCPA's one-year statute of limitations, 15 U.S.C. § 1692k(d), had already lapsed with respect to Plaintiff's untriggered "validation" rights with respect to the trio of debts reduced to judgment.

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[15]See, *e.g., Mack*, 2015 U.S. Dist. LEXIS 1803, 2; *Johnson v. Atty. Office of Newman*, 2013 U.S. Dist. LEXIS 179576, 22-23 (M.D. La. Dec. 23, 2013).

[16] The allegations of ¶ ¶ 13 and 19 of the Complaint seem to indicate that Plaintiff's §1692e(8) claim is predicated on only his two debts which have not been reduced to judgment. Even if this isn't so, under the FDCPA, "a judgment is not a debt; rather a debt is "any obligation or alleged obligation of a consumer to pay money arising out of a transaction . . ., *whether or not such obligation has been reduced to judgment*." 15 U.S.C. § 1692a(5) (emphasis added). In other words, the "debt" is an obligation underlying a judgment, not the judgment itself. *Denman v. W. Mercantile Agency, Inc.*, 2012 U.S. Dist. LEXIS 67812, 3-4 (D. Or. May 11, 2012). While a consumer may dispute a debt under the FDCPA, reduction of the debt to final judgment generally establishes the validity of that debt. *Denman*, 2012 U.S. Dist. LEXIS 67812, 4. Moreover, the judgment procedurally bars Mr. Sayles from predicating any collateral claim in this action

ARS's letter containing the § 1692g(a) notices for his fourth account was mailed on 6/9/13 and was not returned. His "30 day statutory contest period" for that debt lapsed in the absence of a dispute on or about 7/10/13, more than year before suit was filed. On 9/5/13, ARS's final letter containing the § 1692g(a) notices was mailed and not returned to ARS. The contest period for that debt lapsed in the absence of a dispute on or about 10/6/13, again more than a year before suit was filed. Thus the 3/4/14 "validation" request for "all the accounts that I have in collections with you if there is more then one," was untimely for all such accounts. Summary judgment or a dismissal

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concerning the judgment under the doctrine of *res judicata*. See, *Franklin Collection Serv. v. Stewart*, 863 So. 2d 925, 929-930, ¶ 13 (Miss. 2003). Finally, plaintiff cannot collaterally challenge a state court judgment in an FDCPA action. See, e.g., *Denman*, 2012 U.S. Dist. LEXIS 67812, 4 *citing Howard v. RJF Financial, LLC*, 2012 U.S. Dist. LEXIS 6599, 2012 WL 170904, at*2 (D. Ariz. Jan. 20, 2012). Mr. Sayles appeared in Justice Court and had an opportunity to contest ARS's 2013 collection action in state court. Under the *Rooker-Feldman* doctrine, a federal district court is not the proper forum to seek reversal of an adverse decision of the state trial court. "If the decision was wrong, that did not make the judgment void, but merely left it open to reversal or modification in an appropriate and timely appellate proceeding. Unless and until so reversed or modified, it would be an effective and conclusive adjudication." *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 415, 44 S. Ct. 149, 68 L. Ed. 362 (1923);The *Rooker-Feldman* doctrine "precludes a United States District Court from exercising subject-matter jurisdiction in an action" where "the losing party in state court filed suit in federal court after the state proceedings ended, complaining of an injury caused by the state-court judgment and seeking review and rejection of that judgment." *Hall v. Phenix Investigations, Inc.*, 2014 U.S. Dist. LEXIS 156930, 5 (N.D. Tex. Nov. 5, 2014) quoting *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 291, 125 S. Ct. 1517, 161 L. Ed. 2d 454 (2005).

of Mr. Sayles' §1692e(8) claim is thus appropriate for the same reasons explained in *Hunsinger,* and numerous other cases reaching the same conclusion.[17]

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[17] See, e.g., *Johnson*, 2013 U.S. Dist. LEXIS 179576, 26, *Parker v. Pressler & Pressler,* LLP, 650 F. Supp. 2d 326, 342 (D.N.J. 2009) ("The closest Parker comes to proving that she sent such a request is her apparently spontaneous remark to Maranda Felton on August 15, 2006, when she stated that 'Palisades has sent me a letter and 4 months ago I responded saying that I dispute the validity of the debt, and now I get something from Court that I am being summoned?' This evidence, though, is also insufficient to show that Parker complied with her threshold burden timely to request validation." (citation omitted)). This Court therefore FINDS that Plaintiffs failed to request verification of the debt within the thirty-day period required in § 1692g."); *Daniel v. W. Asset Mgmt.,* 2011 U.S. Dist. LEXIS 124788, 13 (E.D. Mich. Oct. 28, 2011)(Granting summary judgment in defendant's favor where plaintiff never attempted to validate debt); *Swartz v. City Mortg., Inc.*, 911 F. Supp. 2d 916, 933-34 (D. Haw. 2012)("Plaintiffs failed to make a timely request for verification of the debt, and CMI was entitled to ignore Plaintiffs' untimely request for verification...."); *Lorenz v. JPMorgan Chase*, 2014 U.S. Dist. LEXIS 178833, 8-11, fn. 6(D. Minn. Dec. 8, 2014)("Lorenz seems to allege that the filing of her Complaint itself is her request for verification under § 1692g(b), but does not (and could not) allege in her Complaint that JP Morgan failed to cease debt collection efforts after the filing of her Complaint....To the extent Lorenz bases any § 1692g(b) claim on a different request for verification, Lorenz has not alleged that she made any verification request in writing and within the thirty day time period set forth in § 1692g(b)."); *Brady v. Credit Recovery Co.*, 160 F.3d 64 (1st Cir. 1998)("Under section 1692g(b) a consumer must dispute a debt in writing, within an initial thirty-day period, in order to trigger a debt validation process."); *Crow v. Wolpoff & Abramson*, No. 06-3228, 2007 U.S. Dist. LEXIS 31356, 2007 WL 1247393, at *3 (D. Minn. Apr. 19, 2007) (explaining, in the context of an affirmative defense, that "if indeed the facts do support defendant's assertion that plaintiff received the debt notice before May 24, 2006, the validation request was untimely per the FDCPA."); *Lipa v. Asset Acceptance, LLC*, 572 F. Supp. 2d 841, 854 (E.D. Mich. 2008) ("[Section 1692g(b)] makes clear the rule that the consumer's rights (to validation of the debt) and the collector's responsibilities (to validate the debt and cease collection activities) are not triggered unless the consumer files a request for validation within thirty days of receiving notice of the debt." (citation omitted)); *Agu v. Rhea*, 2010 U.S. Dist. LEXIS 132706, 2010 WL 5186839, at *5 (E.D. N.Y. Dec. 15, 2010) ("Plaintiff's Section 1692g(b) claims fail because, although he alleges that he repeatedly requested that the Collection Defendants verify the questioned debts, he does not allege that he made any of these requests within the thirty day time window that Section 1692(b) provides."); *Langley v. Chase Home Finance, LLC*, 2011 U.S. Dist. LEXIS 32897, 2011 WL 1150772, at *12 (W.D. Mich. Mar. 11, 2011) (finding that defendants were entitled to summary judgment because the plaintiff did not dispute that he failed to request validation within 30 days of receiving the initial notice); *Bohner v. LHR, Inc.*, 2012 U.S. Dist. LEXIS 183380 (D. Minn. December 10, 2012) adopted by, summary judgment granted by *Bohner v. LHR, Inc.*, 2013 U.S. Dist. LEXIS 293 (D. Minn., Jan. 2, 2013)("Once plaintiff failed to make the request within the 30-day period, Defendant was

3. The FDCPA and credit reporting

Although the Complaint alludes to credit reporting, it does not purport to state a claim under the FCRA which is a separate federal consumer protection law which regulates that subject. The FDCPA itself prohibits actions against consumers by debt collectors that result in the harassment or abuse of those consumers. 15 U.S.C. § 1692d. That section identifies, without limitation, actions that can be considered a violation. 15 U.S.C. § 1692d(1)-(6). Specifically, one violation is "[t]he publication of a list of consumers who allegedly refuse to pay debts, except to a consumer reporting agency . . . ." 15 U.S.C. § 1692d(3) (emphasis added). A debt collector can thus report debts to a credit bureau unless "such reporting has been prohibited by the creditor and the debt collector makes it appear that such reporting has in fact been authorized by the creditor."[18] Thus, a debt collector does not violate the FDCPA simply by the reporting of a "negative entry" on a consumer's credit report.[19]

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under no obligation to validate the debt."); *Mack v. Progressive Fin. Servs.*, 2015 U.S. Dist. LEXIS 1803, 6 (E.D. Tex. Jan. 7, 2015).

[18]*Campbell v. Credit Protection Ass'n, L.P.*, 4:12CV289 AGF, 2013 U.S. Dist. LEXIS 45004, 2013 WL 1282348, at *8 (E.D. Mo. March 27, 2013).

[19]*Kopp v. Consumer Adjustment Co.*, 2014 U.S. Dist. LEXIS 14735, 4-5 (E.D. Mo. Feb. 6, 2014). In the absence of a timely written notice of dispute received within the "statutory contest period," other courts have held that a debt collector is entitled to continue reporting a debtor's debts to credit reporting agencies. *Agu*, 2010 U.S. Dist. LEXIS 132706, 14 ("[A]bsent factual allegations that Plaintiff sent a timely Section 1692(b) demand, the Collection Defendants had every right to continue reporting Plaintiff's alleged debts to the [Credit] Reporting Agency Defendants."); *Jackson v. Genesys Credit Management*, 06-CV-61500, 2007 U.S. Dist. LEXIS 52938, 2007 WL 2113626, at *3 (S.D. Fla. 2007) (absent a timely demand under Section 1692g(b), nothing precludes a debt collector from reporting a debt to credit agencies); *Duffee v. Collecto, Inc.*, 2012 U.S. Dist. LEXIS 26679, 8 (N.D. Tex. Feb. 8, 2012)(same); *Lorandeau v. Capital Collection Serv., No. 10-3807,* 2011 U.S. Dist. LEXIS 101994, 2011 WL 4018248, at *11-12 (E.D. Pa. Sept. 8, 2011) (plaintiff's claim based upon a defendant's attempt to collect an invalid debt unless the plaintiff disputed the debt).

The FCRA imposes duties on consumer reporting agencies[20], users of consumer reports, and furnishers of information[21] to consumer reporting agencies ("furnisher"). See 15 U.S.C. § 1681, et seq. ARS is a "furnisher of information." Section 1681s-2 delineates the furnishers' obligations, and they include (a) duties to provide accurate information and (b) duties that are triggered only when a credit reporting agency notifies the furnisher of a dispute. 15 U.S.C. § 1681s-2(a) & (b).The complaint fails to even imply a FCRA claim against ARS because there is no private right of action under section 1681s-2(a) and because section 1681s-2(b) imposes no duty on ARS to report their investigative findings to consumers. As recently explained in *Desselle v. Ford Motor Credit Co. LLC*, 2014 U.S. Dist. LEXIS 128858, 6-7 (E.D. La. Sept. 15, 2014):

> ***Section 1681s-2(a)(8) outlines the procedures by which a consumer can directly dispute the accuracy of information with a furnisher.*** After receiving notice of a dispute, the furnisher shall (1) conduct an investigation; (2) review all relevant information; (3) report the results of the investigation to the consumer within 30 days, pursuant to 15 U.S.C. § 1681i(a)(1)...and (4) if the furnisher discovers the reported information was inaccurate, the furnisher must promptly notify each consumer reporting agency to which it provided the inaccurate information and provide them with the correct information. 15 U.S.C. § 1681s-2(a)(8)(E).

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[20] A "consumer reporting agency" ("CRA") is "any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports." Id. § 1681a(f). ARS is not a CRA.

[21]"Although undefined by the statute, the latter category ["furnisher of information"]is understood to include any entity that reports information relevant to a consumer's credit rating — i.e., payment history, amount of debt, and credit limit — to credit reporting agencies. See H.R. Rep. No. 108-396, at 24 (2003) (Conf. Rep.) ("The most common ... furnishers of information are credit card issuers, auto dealers, department and grocery stores, lenders, utilities, insurers, collection agencies, and government agencies.")." *Burrell v. DFS Servs., LLC*, 753 F. Supp. 2d 438, 446 (D.N.J. 2010)

> ***While Section 1681s-2(a)(8) prescribes the process for consumers to directly dispute the accuracy of credit information with the furnisher, Section 1681s-2(c) expressly prohibits private enforcement of that section. Sections 1681n & o outline civil liability for noncompliance of the FCRA, but section 1681s-2(c) specifies that those sections do not apply to 1681s-2(a). 15 U.S.C. 1681s-2(c). Accordingly...15 U.S.C. § 1681s-2(a) provides no private right of action.*** The Ninth Circuit discussed the rationale for the intentional prohibition of private rights of action under this section in an often-cited case, noting "Congress did not want furnishers of credit information exposed to suit by any and every consumer dissatisfied with the credit information furnished." *Nelson v. Chase Manhattan Mortgage Corp*., 282 F.3d 1057, 1059 (9th Cir. 2002). Other courts also routinely recognize the plain language of the FCRA and aver that there is no private right of action under 15 U.S.C. § 1681s-2(a). See*...Olexy v. Interstate Assurance Co.*, 113 F. Supp. 2d 1045, 1048-47 (S.D. Miss. 2000)....***[Plaintiff]'s claim under 15 U.S.C. 1681s-2(a) therefore fails as a matter of law because there is no private right of action under 15 U.S.C. 1681s-2(a).***
>
> Section 1681s-2(b) explains a furnisher's responsibilities *after a credit reporting agency has notified the furnisher of a consumer dispute regarding information provided by the furnisher*. Upon receiving notice of a dispute, the furnisher is to conduct an investigation and report the results to the appropriate consumer reporting agencies. 15 U.S.C. § 1681s-2(b). Section 1681s-2(b) provides for a private right of action, and a consumer may bring a cause of action against the furnisher if it does not comply with the provisions of section 1681s-2(b)....
>
> In *Young v. Equifax Credit Information Services*, the Fifth Circuit explained that "the FCRA establishes a duty for a consumer reporting agency...to give notice of a dispute to a furnisher of information...within five business days from the time the consumer notifies the consumer reporting agency of the dispute." 294 F.3d 631, 639 (5th Cir. 2002) (citing 15 U.S.C. § 1681i(a)(2)). 15 U.S.C. § 1681s—2(b)(1). "***Such notice is necessary to trigger the furnisher's duties under Section 1681s—2(b).***" Id. *The court ultimately held that* ***a consumer's private right of action under 15 U.S.C. § 1681s-2(b) requires proof that the credit reporting agency had notified the furnisher of a dispute.*** *Id.* ***Courts have thus held that plaintiffs who fail to allege facts that the credit reporting agency notified the furnisher of a dispute fail to state a claim as a matter of law under 15 U.S.C. § 1681s-2(b)****....*
>
> *Here,[the Plaintiff debtor] does not allege that the three credit reporting agencies notified [Defendant credit information provider] of the dispute. He merely asserts that he himself notified the three credit reporting agencies and [Defendant], and that [Defendant] failed to timely respond or investigate the inquiries. [Plaintiff] therefore fails to state a claim as a matter of law because notice given by the credit reporting agency to the furnisher is necessary to trigger the furnisher's duties under section 1681s—2(b), and [Plaintiff] alleges no such facts in his Complaint.*

Desselle, 2014 U.S. Dist. LEXIS 128858, 7-8 (some citations omitted; emphasis added); Accord:

Hunsinger, 2014 U.S. Dist. LEXIS 52029, 24-25.

Desselle further explains:

> [Plaintiff]'s claim under 15 U.S.C. 1681s-2(b) also fails as a matter of law because [Plaintiff] only alleges that [Defendant] failed to fulfill its duties under the section because it did not supply Desselle with its investigation findings within thirty days. While section 1681s-2(a)(8)(E) requires the furnisher to provide the consumer with its findings within thirty days, section 1681s-2(b) imposes no such requirement. Rather, *section 1681s-2(b) only mandates that the furnisher report its investigation findings to the consumer reporting agency that notified the furnisher of the dispute, 15 U.S.C. § 1681s-2(b)(1)(C), and to notify its results to other consumer reporting agencies to which the furnisher had supplied erroneous information.* 15 U.S.C. § 1681s-2(b)(1)(D). *While the furnisher has the discretion to notify the consumer with the investigation results, the furnisher is not obligated to perform this task under section 1681s-2(b).* See *Chiang*, 595 F.3d at 36 ("Although a furnisher may choose to contact a consumer directly about a dispute reported to the furnisher by a CRA (credit reporting agency), 'requiring a furnisher to automatically contact every consumer who disputes a debt would be terribly inefficient and such action is not mandated by the FCRA.'"). *Accepting [Plaintiff]'s allegations as true, [Plaintiff]'s section 1681s-2(b) claim also fails as a matter of law because* [Plaintiff] *only alleges that [Defendant] failed to supply him with the investigative results, and not a credit reporting agency, which does not signify a furnisher's duty under section 1681s-2(b).*

Desselle, 2014 U.S. Dist. LEXIS 128858, 8-9 (emphasis added).

Just like the *Desselle* and *Hunsinger* plaintiffs, Mr. Sayles made no attempt to communicate his "dispute" to a CRA. Instead, he "disputed" directly to ARS, so § 1681s-2(a)(8) applies and he has no private right of action against ARS. Therefore his complaint fails to state a claim as a matter of law because notice given by a CRA to ARS is necessary to trigger ARS's duties under § 1681s—2(b), and he alleges no such facts in his Complaint. Similarly, any implied § 1681s-2(b) claim also fails as a matter of law because Mr. Sayles only alleges that ARS failed to supply him with the investigative results, and not to a credit reporting agency, which is not a furnisher's duty under section 1681s-2(b).

Furnishers are prohibited from reporting information relating to a consumer to a CRA if the furnisher knows or has reasonable cause to believe that the information is inaccurate. § 1681s-2(a)(1)(A). "Reasonable cause" means having specific knowledge, other than solely allegations by the consumer, that would cause a reasonable person to have substantial doubts about the accuracy of the information. § 1681s-2(a)(1)(D). Furnishers shall not furnish information relating to a consumer to any CRA if the person has been notified by the consumer that specific information is inaccurate, and the information is, in fact, inaccurate. § 1681s-2(a)(1)(B).[22]

The ability of the consumer to dispute information directly with the furnisher is governed by regulations, but the statute sets forth the procedure to be followed regarding information disputes:

> (D) Submitting a notice of dispute
>
> A consumer who seeks to dispute the accuracy of information shall provide a dispute notice directly to such person at the address specified by the person for such notices that-
>
> (i) identifies the specific information that is being disputed;
> (ii) explains the basis for the dispute; and
> (iii) includes all supporting documentation required by the furnisher to substantiate the basis of the dispute.

15 U.S.C. § 1681s-2(a)(8)(D).[23]

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[22] *Woods v. Prot. One Alarm Monitoring, Inc.*, 628 F. Supp. 2d 1173, 1180 (E.D. Cal. 2007).

[23] Again, the provisions recognizing an injured individual's right of recovery for negligent or wilful violations of the statute do not apply to any violation of § 1681s-2(a) (the portion of the statute that concerns the duties of furnishers of information before notification from a CRA of a dispute). Title 15 U.S.C. § 1681s-2(d) provides that the provisions of law described in § 1681s-2(a) shall be enforced exclusively under § 1681s of the title by federal agencies and officials and the state officials identified in that section. See, 15 U.S.C. § 1681s(c). The only section that can be enforced by a private citizen seeking to recover damages caused by a furnisher of information is § 1681s-2(b). *SimmsParris v. Countrywide Financial Corp.,* 652 F.3d 355, 358 (3d Cir. 2011)*;Chiang v. Verizon New England Inc*., 595 F.3d 26, 35 (1st Cir. 2010); *Gorman v. Wolpoff & Abramson, LLP*, 584 F.3d 1147, 1154 (9th Cir. 1009); *Saunders v. Branch Banking & Trust Co. of Va.*, 526 F.3d 142, 149 (4th Cir. 2008)).

The next subsection spells out the duty of a person after receiving a dispute to investigate the disputed information, review all relevant information provided by the consumer with the notice, report the results of the investigation to the consumer, and notify each CRA if the investigation finds that the information reported was inaccurate. 15 U.S.C. § 1681s-2(a)(8)(E).

The purpose of the FCRA is to "'meet[] the needs of commerce' and be 'fair and equitable to the consumer.'"[24] It would not meet the needs of commerce to allow any dispute by a consumer in the first instance—a dispute that did not at least meet the requirements of a bona fide dispute under relevant caselaw,[25] or the requirements of §§ 1681s-2(a)(8)(D),(F)—to trigger an absolute obligation on the part of the furnisher to report the dispute to the CRA. As noted in *Saunders*, when a furnisher responds to a dispute verification form from a CRA and relates an ongoing dispute, the CRA records the dispute in the credit report and does not include the derogatory information in assessing the credit score.[26] In this scheme, if a consumer wanted to avoid having derogatory information included in his credit score assessment, he could file a meritless dispute with the creditor/furnisher and, if the creditor/furnisher were obligated to include information that the account was disputed, no matter how frivolous, the CRA would not include the derogatory information in its assessment. This result clearly does not satisfy the goal of "meeting the needs of commerce for consumer credit, personnel, insurance, and other information." 15 U.S.C. § 1681(b). Rather than being "fair and equitable to the consumer," *id.*, a system which allows a consumer to inflate his credit score and thus derive a benefit from filing a frivolous dispute allows the consumer to do an end-run on the purpose of the statutory scheme. *Gorman,* which was relied upon in *Saunders,* thus concluded that

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[24] *Saunders*, 526 F.3d at 147 (quoting 15 U.S.C. § 1681(b)).

[25] *See,* e.g., *Gorman*, 584 F.3d at 1163; *Saunders*, 526 F.3d at 148 (listing courts requiring claimed inaccuracy to create a materially misleading impression)

[26] *Saunders*, 526 F.3d at 150.

> a furnisher does not report "incomplete or inaccurate" information within the meaning of § 1681s-2(b) simply by failing to report a meritless dispute, because reporting an actual debt without noting that it is disputed is unlikely to be materially misleading. It is the failure to report a bona fide dispute, a dispute that could materially alter how the reported debt is understood, that gives rise to a furnisher's liability under § 1681s-2(b).

Id. at 1163 (citation omitted)

Section 1681s-2(a)(8)(F) addresses frivolous or irrelevant disputes.

(I) In general

> This paragraph shall not apply if the person receiving a notice of a dispute from a consumer reasonably determines that the dispute is frivolous or irrelevant, including—
>
> > (i) by reason of the failure of a consumer to provide sufficient information to investigate the disputed information; or
> > (ii) the submission by a consumer of a dispute that is substantially the same as a dispute previously submitted by or for the consumer, either directly to the person or through a consumer reporting agency under subsection (b) of this section, with respect to which the person has already performed the person's duties under this paragraph or subsection (b), as applicable.

"There is no duty to reinvestigate a consumer complaint lodged directly against or through a consumer reporting agency, when the dispute is determined to be frivolous or irrelevant . . . ."[27] The 3/4/14 generic form letter faxed to ARS fails to satisfy the requirements of § 1681s-2(a)(8)(D)(iii) because it did not include *any*, much less "all supporting documentation or other information reasonably required to substantiate the basis of the dispute." Similarly, the letter may be deemed frivolous or irrelevant pursuant to § 1681s-2(a)(8)(F)(i)(I) because it failed to provide sufficient information to investigate.[28] The letter does not reference any particular account. It does not state why Mr. Sayles believes any of his accounts were disputed. Neither the FCRA or FDCPA obligates a furnisher to provide a "detailed accounting" or copies of contract or other "supporting documentation"[29] Plaintiff could not succeed on a § 1681s-2(b) claim against Defendant even if he had pled one pursuant to the relevant caselaw discussed above in that, absent a *bona fide* dispute, ARS had no obligation to mark the account disputed. Therefore, this is another reason why Defendant's motion to dismiss is appropriately granted as a matter of law.

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[27] *Groves v. U.S. Bank, N.A.*, No. 8:10-CV-2664-T-17TGW, 2012 U.S. Dist. LEXIS 12836, 2012 WL 360197, at *7 (M.D. Fla. Feb. 2, 2012) (citing 15 U.S.C. § 1681s-2(a)(8)(F)(i)(I)); *Noel v. First Premier Bank*, 2012 U.S. Dist. LEXIS 32595, 24-25 (M.D. Pa. Mar. 12, 2012)("[W]e conclude that if a consumer does not comply with the submission requirements of § 1681s-2(a)(8)(D) or if a dispute is determined to be frivolous or irrelevant under § 1681s-2(a)(8)(F), the furnisher has no duty to report the debt as disputed under § 1681s-2(a)(3) and the furnisher is not subject to liability under § 1681s-2(b)).

To prevail in a hypothetical case like this, Mr Sayles would have to both demonstrate that he conveyed factual information to a CRA who then relayed it to ARS and ultimately prove that he was

[28] The form letter in that case similarly merely stated that "I wish to dispute the above referenced account. The charges are excessive and inflated and not warranted by any existing contract. I am requesting proof of the alleged debt. I request a copy of the initial contract, and proof of late fees, interest, etc. I am requesting an investigation of this account pursuant to the Fair Credit Reporting Act, 15 USC 1681s-2. This is a disputed account, and you must mark it as disputed on my credit report." *Noel*, 2012 U.S. Dist. LEXIS 32595, 3-4.

[29] *Myers v. Midland Credit Mgmt.*, 2014 U.S. Dist. LEXIS 32349, 19 (M.D. Pa. Mar. 13, 2014); *Devine v. Terry,* 2014 U.S. Dist. LEXIS 138938, 27 (D. Conn. Sept. 30, 2014)*; Chaudhry v. Gallerizzo*, 174 F.3d 394, 406 (4th Cir. 1999).

not liable for the debts in question.[30] Mr. Sayles' complaint does not even suggest that he isn't liable for all of the debts assigned to ARS.

Form letters like Exhibit A-3 are often used by entities known as "credit repair organizations" as defined by 15 U.S.C. § 1679a(3)(A) or so called "debt elimination/settlement companies" initiating actions under Fair Credit Billing Act ("FCBA"), 15. U.S.C. §§ 1666 et seq. Unscrupulous CRO tactics sometimes "consist of inundating the credit reporting agencies with dispute letters, sent in the name of consumers, which falsely allege that various items on the credit report are incorrect or that a particular account does not belong to a consumer."[31] Other CRO's "sell[] written material which include books, *sample form letters* and other written material designed to enable the consumer to engage in self-help activities such as...[u]pdating inaccurate information on credit reports pursuant to the Fair Credit Reporting Act."[32] Some debt elimination services, including at least one run by unscrupulous attorneys, have improperly used form letters created and used by the attorneys and their consumer creditor "clients" which other courts have found to be a "sham and do not assert valid billing error disputes" under the FCBA, because "the billing error disputes did not provide any legal or valid basis for withholding payments" to a creditor.[33]

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[30]See, e.g., *Klotz v. Trans Union, LLC*, 246 F.R.D. 208, 212-13 (E.D. Pa. 2007); *Dunkinson v. Citigroup Inc*., 2012 U.S. Dist. LEXIS 1019, 9 (D.N.J. Jan. 3, 2012); *Cahlin v. General Motors Acceptance Corp*., 936 F.2d 1151, 1160 (11th Cir. 1991); *Benson v. Trans Union, LLC*, 387 F. Supp. 2d 834, 842 (N.D. Ill. 2005); *Moline v. Experian Info. Solutions, Inc*., 289 F. Supp. 2d 956, 958-59 (N.D. Ill. 2004); *Molton v. Experian Info. Solutions, Inc*., 2004 U.S. Dist. LEXIS 659, 2004 WL 161494 at *6 (N.D. Ill. 2004); *Murphy v. Midland Credit Mgmt.*, 456 F. Supp. 2d 1082, 1091 (E.D. Mo. 2006); *Lenox v. Equifax Info. Servs. LLC*, 2007 U.S. Dist. LEXIS 34453, 2007 WL 1406914 at *4 (D. Or. 2007); *Bolick v. DFS Servs. LLC*, 2011 U.S. Dist. LEXIS 105984, 7 (E.D. Pa. Sept. 16, 2011)); *Zala v. Trans Union, LLC*, 2001 U.S. Dist. LEXIS 549, 2001 WL 210693 at *5 (N.D. Tex. 2001)(finding that the plaintiff had produced sufficient evidence of inaccuracy to avoid summary judgment); *Elliott v. TRW Inc*., 889 F. Supp. 960 (N.D. Tex. 1995).

[31] *FTC v. Gill*, 71 F. Supp. 2d 1030, 1040 (C.D. Cal. 1999). *See also*, *Esquibel v. Chase Manhattan Bank USA*, N.A., 276 F. App'x 393, 395 (5th Cir. 2008), particularly at fn.2 (quoting vague form letter similar to that employed by Mr. Sayles) and fn. 1 (citing numerous cases in which such form letters were involved in similar suits); *Langenfeld v. Chase Bank United States*, No. 05-CV-619, 537 F. Supp. 2d 1181, 2008 U.S. Dist. LEXIS 17126, 2008 WL 647511 (N.D. Okla. Mar. 10, 2008); *Wash. Mut. Bank v. Forgue*, No. 07-MC-6027, 2007 U.S. Dist. LEXIS 87532, 2007 WL 4232708 (W.D.N.Y Nov. 7, 2007); *Eicken v. USAA Federal Savings Bank*, 498 F. Supp. 2d 954 (S.D. Tex 2007); *Gengo v. Target Nat. Bank*, 513 F. Supp. 2d 842 (S.D. Tex 2007); *Cunningham v. Bank One*, 487 F. Supp. 2d 1189, 1195 (W.D. Wash 2007)).

There is no doubt that the law in the Fifth Circuit is consistent with the foregoing authorities because in *Esquibel*,[34] our court of appeals affirmed a TILA summary judgment in favor of the defendant bank based on a similar internet form letter styled "First Notice of Billing Errors" sent by the plaintiff to the bank's dispute department.[35] In that case, the plaintiff obtained a form "dispute" letter from the internet which said nothing in particular which Chase could investigate or verify as true. After Chase wrote off her account as bad debt, it was referred to a third-party collection service like ARS. Like the Plaintiff in this case, the *Esquibel* plaintiff did not timely dispute her liability for the debts to the collection agency. Instead, she requested payment plan arrangements with the collection agency. Months later, she filed suit against Chase alleging that Chase had failed to fulfill its FCBA statutory obligations to respond to her notice of a billing error. The Fifth Circuit affirmed a judgment in favor of the Bank in part because the plaintiff's form letter did not comply with 15 U.S.C. § 1666(a)'s common sense requirements that a billing error notice must identify the debtor by name and account number, "indicates [her] belief that the statement contains a billing error and the amount of such billing error," and the debtor must explain her belief why the statement contains a billing error.[36] Sham disputes do not support claims under the FCRA, FCBA or FDCPA.

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[32] *In re Nat'l Credit Mgmt. Grp.*, L.L.C., 21 F. Supp. 2d 424, 458 n.50 (D.N.J. 1998) (emphasis added).

[33] See, e.g., *Chase Bank USA, N.A. v. Hess*, 2013 U.S. Dist. LEXIS 32710, 5 (D. Del. Mar. 7, 2013) report and recommendation adopted, 2013 U.S. Dist. LEXIS 134729, 2013 WL 5314706 (D. Del. Sept. 20, 2013).

[34] *Esquibel v. Chase Manhattan Bank USA, N.A.*, 397 (5th Cir. 2008)

[35] *Id,* 276 F. App'x, 394. The *Esquibel* letter reads very much like Mr. Sayles' form letter: "Because I believe I should not have been charged finance charges or fees for the history of this account, I dispute the accuracy of the following items on my statements which have been calculated based on the inclusion of those charges: the current balance, the amounts and payments due and all finance charges and other fees charged since the account was opened. The exact amount of all such previous finance charges and fees hereby disputed will be determined after you provide the documentary evidence requested below." *Esquibel*, 276 F. App'x, 395 n.2.

III. CONCLUSION

Mr. Sayles' claims are barred by *Rooker Feldman* to the extent they collaterally attack the unappealed final justice court judgment. They are further time and procedurally barred because Mr. Sayles failed to validate or dispute any of his debts during the § 1692g "30 day statutory contest periods." All such contest periods lapsed more than a year before suit was filed so his claims are also barred by § 1692k(d)'s one year statute of limitation. Ultimately, his claim is an untimely attempt to "back door," through the FDCPA's 15 U.S.C. § 1692e(8), a groundless form letter claim which is routinely disallowed when it knocks at the "front door" of the FCRA and the FCBA. For these reasons, it is respectfully submitted that ARS's motion is well taken and should be granted.

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[36] Precisely to curb this sort of abuse, Congress excuses creditors from corresponding with consumers seeking to resolve billing differences, unless the written notice from the consumer sets forth or otherwise enables the creditor to identify the name and account number of the obligor, indicates the obligor's belief that the statement contains a billing error and the amount of such billing error, and sets forth the reasons for the obligor's belief (to the extent applicable) that the statement contains a billing error. 15 U.S.C. §§ 1666(a)(1), (2), and (3). Similarly, 12 C.F.R. § 226.13(b), the applicable regulation interpreting 15 U.S.C. § 1666(a), requires written notification to the creditor identifying the obligor by name and account number, and further mandates that such notice '[t]o the extent possible, indicate[ ] the consumer's belief and the reasons for the belief that a billing error exists, and the type, date, and amount of the error.'" If the written notice provided by the obligor does not satisfy [both requirements], the creditor's Compliance Duties are not triggered." *Langenfeld*, 537 F. Supp. 2d at 1193; see also *Conn-Burnstein v. Saks Fifth Ave. & Co.*, 85 Fed. Appx. 430, 431 (6th Cir. 2002) (holding that absent legally sufficient notice, compliance duties are not triggered such that an obligor can allege an FCBA violation) and *Ponte v. Chase Bank USA, N.A.*, 2013 U.S. Dist. LEXIS 155044, 34 (E.D. Mich. Oct. 8, 2013). "Use of a form letter makes it less likely that a plaintiff has a genuine dispute with his bill and more likely that a plaintiff was attempting to rack up TILA violations to ultimately eliminate his debt." *Langenfeld*, 537 F. Supp. 2d, 202.

Respectfully submitted, this the 22nd day of May 2015.

ADVANCED RECOVERY SYSTEMS, INC.

By: Its Attorneys
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CERTIFICATE OF SERVICE

I hereby certify that on this day I electronically filed the foregoing **DEFENDANT ADVANCED RECOVERY SYSTEMS, INC.'S MEMORANDUM IN SUPPORT OF ITS MOTION PURSUANT TO F. R. CIV. P. 12(B)(6), 12(c) AND 56** with the clerk of the Court using the MEC system which sent notification of such filing to the following:

John N. Rocray
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So certified this the 22nd day of May, 2015.

/s/ William V. Westbrook, III
WILLIAM V. WESTBROOK, III